

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 14, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal Nos. 2012AP26
2012AP1380**

Cir. Ct. No. 2011CV627

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

GREG GRISWOLD,

PETITIONER-APPELLANT,

v.

**TOWN OF CROSS PLAINS, TOWN OF CROSS PLAINS 2010 BOARD OF
REVIEW, GREG HYER, ANNE HERGER, JEFF BAYLIS, VERA RILEY,
GREG HAACK, TERRY KURTH, BRAD CUPP, JAMES DANIELSON, LEE
DEGROOT AND ACCURATE APPRAISAL, LLC,**

RESPONDENTS-RESPONDENTS.

APPEALS from orders of the circuit court for Dane County:
JOHN C. ALBERT, Judge. *Affirmed and cause remanded with directions.*

Before Lundsten, Higginbotham and Sherman, JJ.

¶1 PER CURIAM. Greg Griswold appeals an order of the circuit court that denied his motion for reconsideration of an order granting the respondents' motion for sanctions against Griswold. Griswold also appeals Judge John C. Albert's decision not to recuse himself from the case. For the reasons discussed below, we affirm.

BACKGROUND

¶2 These consolidated appeals arise from two of several circuit court actions initiated by Griswold to challenge property taxes assessed against real property located at 3488 County Highway J in the Town of Cross Plains, Wisconsin. *See generally* Dane County Circuit Court case nos. 2009CV1034 (appeal no. 2009AP1599), 2010CV3552 (appeal no. 2011AP881), and 2009CV2873 (appeal no. 2012AP433). After the Board of Review of the Town of Cross Plains denied Griswold's appeal of the 2010 tax assessment for the Highway J property, Griswold commenced this action by filing a summons and petition for writ of certiorari in the circuit court. Griswold requested that Judge Albert recuse himself. The request was denied, and Griswold challenges that decision on appeal.

¶3 The circuit court also imposed sanctions against Griswold, ordering that Griswold be barred from initiating any further legal action against the Town of Cross Plains, its Board of Review, or Attorney Mark Hazelbaker concerning Griswold's past asserted interest in the Highway J property. Griswold moved for reconsideration, and the circuit court denied the motion in an order dated and filed May 7, 2012. Griswold now seeks review of that order.

DISCUSSION

¶4 The appellant’s brief contains numerous complaints about the circuit court proceedings in this matter. The brief fails, however, to develop coherent arguments that apply relevant legal authority to the facts of record, and instead relies largely on conclusory assertions. “A party must do more than simply toss a bunch of concepts into the air with the hope that either the trial court or the opposing party will arrange them into viable and fact-supported legal theories.” *State v. Jackson*, 229 Wis. 2d 328, 337, 600 N.W.2d 39 (Ct. App. 1999). This court need not consider arguments that either are unsupported by adequate factual and legal citations or are otherwise undeveloped. See *Dieck v. Unified Sch. Dist. of Antigo*, 157 Wis. 2d 134, 148 n.9, 458 N.W.2d 565 (Ct. App. 1990) (unsupported factual assertions), *aff’d*, 165 Wis. 2d 458, 477 N.W.2d 613 (1991); *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (undeveloped legal arguments). While we make some allowances for the failings of parties who, as here, are not represented by counsel, “[w]e cannot serve as both advocate and judge,” *Pettit*, 171 Wis. 2d at 647, and will not scour the record to develop viable, fact-supported legal theories on the appellant’s behalf, see *Jackson*, 229 Wis. 2d at 337. Here, the appellant has failed to develop his arguments legally or to support them factually. Therefore, we affirm the circuit court on that basis.

¶5 Although we affirm the circuit court for the reason stated above, we choose to briefly explain why some of Griswold’s arguments, as best we understand them, have no merit. Turning first to Griswold’s arguments concerning Judge Albert’s recusal decision, we note that the determination of a judge’s actual or apparent ability to act impartially is for the judge to make. See *State v. American TV & Appliance of Madison, Inc.*, 151 Wis. 2d 175, 183,

443 N.W.2d 662 (1989). This court’s review is limited to determining whether the circuit court made such a determination. *Id.* at 186. Here, the record reflects that Judge Albert considered the issue of recusal and made a determination that recusal was not warranted. Griswold’s conclusory assertions that Judge Albert was biased against him and that there was an appearance of impropriety are insufficient to overturn the decision on the issue of recusal.

¶6 Griswold’s arguments on the issue of sanctions are also without merit. Our review of a circuit court’s decision that an action was commenced frivolously pursuant to WIS. STAT. § 802.05(2) (2011-12)¹ is deferential. *Keller v. Patterson*, 2012 WI App 78, ¶21, 343 Wis. 2d 569, 819 N.W.2d 841. The determination of how much investigation should have been done prior to filing suit is a question that is within the circuit court’s discretion. *Donohoo v. Action Wisconsin Inc.*, 2008 WI 56, ¶34, 309 Wis. 2d 704, 750 N.W.2d 739. We will uphold a discretionary decision where the court “‘examined the relevant facts, applied a proper standard of law and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.’” *Id.* (quoted source omitted).

¶7 Prior to filing the summons and petition for writ of certiorari in this case on February 7, 2011, Griswold filed a complaint in Dane County Circuit Court case no. 2009CV1034 challenging the 2008 assessment of the same Highway J property at issue in the instant case. On April 16, 2009, the circuit court orally dismissed his complaint on the basis that Griswold lacked standing,

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

and subsequently entered judgment against Griswold. This court affirmed that decision in an opinion dated November 29, 2010, in appeal no. 2009AP1599. Also prior to filing the petition in this case, Griswold had filed a complaint in Dane County case no. 2010CV3552 challenging the 2009 assessment of the same property. In an order dated November 1, 2010, the circuit court dismissed the action, again concluding that Griswold did not have standing as a taxpayer because he did not have an ownership interest in the property.² Considering the adverse rulings that already had been entered against Griswold with respect to the same property by the time he filed the petition in this matter, we are satisfied that the circuit court properly exercised its discretion in concluding that the petition was frivolous and that sanctions were warranted.

¶8 We also are satisfied that the circuit court properly exercised its discretion when it determined that the appropriate type of sanction to impose was an order limiting future filings by Griswold on the same issues already litigated with respect to the Highway J property. A circuit court has the authority, under WIS. STAT. § 802.05(3)(b), to issue sanctions in the form of directives of a nonmonetary nature, so long as the sanctions are “limited to what is sufficient to deter repetition” of the conduct for which the sanctions are being issued. *Id.* In this case, the limitation on future filings by Griswold was narrowly tailored to strike a balance among Griswold’s interest in access to the courts, the respondents’ interest in the respondents having claim preclusion applied to limit repetitive litigation, the taxpayers’ right not to have frivolous litigation become an unwarranted drain on their resources, and the public’s interest in maintaining the

² We later summarily affirmed the order of the circuit court in an opinion and order dated July 25, 2012, in appeal no. 2011AP881.

integrity of the judicial system. See *Minniecheske v. Griesbach*, 161 Wis. 2d 743, 749, 468 N.W.2d 760 (Ct. App. 1991).

¶9 Finally, we will address the respondents' motion for sanctions. The respondents request that we find this appeal frivolous under WIS. STAT. RULE 809.25(3) and enter an order awarding the respondents their attorney fees and costs. The respondents further request that we enter an order barring Griswold from suing any of the respondents unless he has an attorney representing him who signs the pleadings.

¶10 WISCONSIN STAT. RULE 809.25(3) states that, if an appeal is found to be frivolous by this court, "the court shall award to the successful party costs, fees, and reasonable attorney fees under this section." Upon appeal from a ruling of frivolousness, we need not determine whether the appeal itself is frivolous before awarding appellate costs and reasonable attorney fees. *Riley v. Isaacson*, 156 Wis. 2d 249, 262, 456 N.W.2d 619 (Ct. App. 1990). Rather, if the claim was correctly adjudged by the circuit court to be frivolous, it is frivolous per se on appeal. *Id.* There is no question, then, that Griswold's appeal of the circuit court's ruling of frivolousness was also frivolous.

¶11 However, we award costs and attorney fees only when we deem an appeal to be frivolous in its entirety. *State ex rel. Robinson v. Town of Bristol*, 2003 WI App 97, ¶54, 264 Wis. 2d 318, 667 N.W.2d 14. We look, then, to whether Griswold's appeal encompasses any non-frivolous issues. We conclude that it does not. Other than Griswold's arguments on the issue of sanctions, which encompass his underlying, meritless arguments about standing, the only other issue coherently argued by Griswold on appeal is whether Judge Albert properly denied Griswold's recusal request. As discussed above, this argument is without

merit, given this court's limited scope of review as to a recusal decision of a circuit court judge. *See American TV*, 151 Wis. 2d at 183-84. Asking this court to adopt arguments rejected by the circuit court without fulfilling the standard of review is generally considered frivolous. *See Lessor v. Wangelin*, 221 Wis. 2d 659, 669, 586 N.W.2d 1 (Ct. App. 1998). We conclude that that is the case here and, accordingly, will grant the respondents' request for costs and reasonable attorney fees, and remand for a determination of such.

¶12 With respect to the respondents' request that we bar Griswold from suing any of the respondents unless he has an attorney representing him, we note that the respondents have not supported their argument with any legal authority indicating that such a limitation would be appropriate here. In addition, we believe that the limitations on future filings specified in the circuit court's order dated February 14, 2012, which we now affirm, accomplish a similar deterrent purpose. Therefore, we decline to enter an order imposing further limitations on Griswold's filings.

CONCLUSION

¶13 To summarize, we affirm the orders of the circuit court and conclude that the respondents are entitled to their costs and reasonable attorney fees on appeal, pursuant to WIS. STAT. RULE 809.25(3), and we remand to the circuit court to determine the proper amount. *See Lessor*, 221 Wis. 2d at 669.

By the Court.—Orders affirmed and cause remanded with directions.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

